

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Ameren Transmission Company of Illinois	:	
	:	Docket No. 15-0237
Petition for an Order Pursuant to	:	
Section 8-509 of the Public Utilities Act	:	
Authorizing Use of Eminent Domain Power.	:	

INITIAL BRIEF OF THE STAFF OF THE ILLINOIS COMMERCE COMMISSION

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Staff of the Illinois Commerce Commission (“Staff”), by and through its undersigned counsel, pursuant to Section 200.800 of the Rules of Practice of the Illinois Commerce Commission (“Commission” or “ICC”) (83 Ill. Adm. Code 200.800), respectfully submits its Initial Brief in the instant proceeding.

I. Introduction

This matter comes before the Commission on the Ameren Transmission Company of Illinois’ Verified Petition (“Petition”) for an order authorizing the use of eminent domain pursuant to Section 8-509 of the Illinois Public Utilities Act, 220 ILCS 5/8-509. (See generally, Petition.) With its Orders in ICC Docket No. 12-0598, the Commission granted ATXI a Certificate of Public Convenience and Necessity pursuant to Section 8-406.1 of the Act and an order pursuant to Section 8-503 of the Act authorizing ATXI to construct a 345 kV transmission line in, among other places, Adams, Cass, Christian, Schuyler, and Shelby Counties, in Illinois. (Staff Ex. 1.0, 4.)

On March 30, 2015, Ameren Transmission Company of Illinois (“ATXI” or “Company”) filed a Petition requesting that the Commission authorize use of eminent

domain to acquire all necessary land rights so that ATXI can construct its planned 345 kV overhead transmission line, which the Commission previously approved in Docket No. 12-0598, across the properties identified on Exhibit A to its Petition (“Unsigned Properties”). (Petition, 11.) On March 31, 2015, ATXI filed testimony in support of its request, which includes a 150-foot wide easement across private properties for portions of its planned 345 kV overhead transmission line. (Staff Ex. 1.0, 4-5.)

This eminent domain proceeding does not include all of the properties across which ATXI will seek eminent domain authority in conjunction with Docket 12-0598; rather, it includes only certain properties across which ATXI requires land rights along the Quincy to Meredosia, the Meredosia to Ipava, and the Pana to Mt. Zion segments, as illustrated by the maps shown on pages 3-7 of Exhibit A to ATXI’s Petition. ATXI’s 345 kV transmission line will ultimately extend from the Mississippi River to Indiana, and it appears that ATXI will file further petitions seeking eminent domain authority for the segments of the transmission line that pass through other geographic areas not covered in this or prior dockets. (Staff Ex. 1.0, 5.) Through its Petition in the instant proceeding, ATXI seeks eminent domain authority to acquire easements across 31 properties with separate tax identification numbers.¹ (ATXI Ex. 1.0, 3.)

The following parties intervened in the docket: Jeffrey and Lisa Warden, Dr. Terry Lynn Traster, Gabriel Farms, Inc., the Irene Morrison Trust, James and Chelli Branyan, Don E. and Margaret S. Metsker.

ATXI filed its direct testimony on March 31, 2015. In addition to Staff, the following parties submitted direct testimony or some other form of pre-filed evidence on April 20,

¹ ATXI filed notices on April 13, 2015, April 16, 2015, April 17, 2015, and April 22, 2015, withdrawing its request with respect to 8 of the parcels identified in its Petition.

2015: Gabriel Farms, Inc., Jeffrey and Lisa Warden, the Irene Morrison Trust, Jim and Chelli Branyan, and Dr. Terry Lynn Traster. ATXI submitted rebuttal testimony on April 23, 2015. An evidentiary hearing was held on April 27, 2015. Pre-filed evidence was admitted into the record, witnesses were made available for cross examination, and the record was held open generally. (Tr. (April 27, 2015).)

II. Staff Route Concerns Near Assumption

Staff witness Greg Rockrohr expresses concern in his testimony that ATXI seeks eminent domain authority in this docket to construct a portion of the Pana to Mt. Zion portion of its transmission line using a route near Assumption that may not coincide with the route that the Commission approved in Docket No. 12-0598. Staff Ex. 1.0, 11. Specifically, the Commission's order in Docket No. 12-0598 specified a route "along" Highway 51 (Ameren Transmission Company of Illinois, ICC Second Order on Reh'g Docket No. 12-0598, 50 (February 20, 2015) ("12-0598 Second Order on Reh'g")), and Mr. Rockrohr understands that, to avoid a congested area near the intersection of Hwy 51 and County Road 1150N, ATXI intends to construct its transmission line on easements many hundreds of feet east of Hwy 51 (Staff Ex. 1.0, 11-12). Mr. Rockrohr testified that some of the affected landowners were not notified of the underlying Docket No. 12-0598 proceeding, and even if they would have been notified, would have had no reason to suspect that ATXI's route would ever cross their properties. (Staff Ex. 1.0, 12.) Mr. Rockrohr's support for a route along Hwy 51 when testifying in Docket 12-0598 was based, in part, on his understanding that much of the width of ATXI's easements would overlap the existing highway right-of-way, significantly reducing the width of easements required from landowners and presumably reducing impacts on those landowners. (Staff

Ex. 1.0, 13.) Mr. Rockrohr's understanding comes from the testimony of ATXI witness Jeffrey Murbarger in Docket 12-0598. Id. In that proceeding, Mr. Murbarger testified that where the electric line parallels a road right-of-way, the typical practice which ATXI intends to follow in construction of the Illinois Rivers Project is to place the centerline of the tangent structures "as close as practical to the edge of the road right-of-way." (ATXI Ex. 7, 7.) Based in part upon this assertion, Mr. Rockrohr supported the route proposed by the Assumption Group in Docket 12-0598, which was ultimately approved by the Commission in the Second Order on Rehearing, and which ATXI purports it is following in requesting eminent domain authority in this proceeding.

Staff disagrees with ATXI's apparent belief and legal interpretation that its planned divergence and convergence with the Hwy 51 corridor complies with the Commission's order in Docket No. 12-0598. ATXI in this docket explains that it developed a new route that angles nearly .2 miles east of Hwy 51 to avoid what the Company now calls a "pinch-point," or congested area, near Assumption. In Staff's view, the scenario is similar to the one which arose in Docket No. 14-0522 (Staff Ex. 1.0, 16), and the Commission should use a similar solution: the Commission should grant ATXI eminent domain authority in this docket only for parcels not directly affected by ATXI's route deviation.

In Docket No. 14-0522, ATXI explained that it developed a new route to avoid an obstacle (Macon County Conservation District ("MCCD") property) along the Commission-approved transmission line route. (See, generally, Ameren Transmission Company of Illinois, Final Order ICC Docket No. 14-0522 (October 7, 2014) ("Final Order Docket No. 14-0522"), Order on Rehearing ICC Docket No. 14-0522 (December 10, 2014) ("Order on Reh'g Docket No. 14-0522".) In that matter, the Commission recognized

that the Company's request for eminent domain authority extended to parcels which deviated from the Commission-approved route, and would not grant authority for those parcels not on the route. Order on Reh'g Docket No. 14-0522 at 6. While there are several factors which distinguish Docket No. 14-0522 from the instant proceeding, those factors are not such that the Commission should not take similar action here. First, in Docket No. 14-0552 the Commission was aware of the obstacle presented by the MCCD parcel at issue and provided instruction to the Company within its order approving the route in Docket No. 12-0598 as to the obstacle. However, with no prior knowledge about the Assumption pinch-point, the Commission included no instruction in Docket No. 12-0598 regarding the Assumption obstacle. (Staff Ex. 1.0, 16-17.) Second, ATXI could not construct the transmission line across MCCD property, whereas, it can construct the transmission line through the identified pinch-point near Assumption, but would prefer not to. (Staff 17-18.) Indeed, neither Mr. Murbarger nor any other ATXI witness testified that it would not be possible to construct the transmission line with the centerline of the easement as depicted in Attachment C to Staff Ex. 1.0. (ATXI Ex. 6.0, 5-7.) Finally, ATXI was successful in obtaining voluntary easements with respect to each of the properties crossed by its route deviation around the MCCD parcel, whereas, in this docket, ATXI seeks eminent domain authority to acquire the rights it would need to use its route deviation around Assumption. (Staff Ex. 1.0, 18.)

There are many possible routes through and/or around the Assumption pinch-point, and while Staff does not necessarily object to the route that ATXI wishes to use in order to avoid the Assumption pinch-point, it is not possible for him or affected landowners to adequately consider any route modifications in this expedited 45-day eminent domain

proceeding. (Staff Ex. 1.0, 19; Tr. (May 27, 2015).) Nor does it seem appropriate for ATXI to unilaterally choose a route around the Assumption pinch-point with no opportunity or venue for affected landowners to attempt to comment on or affect that route.

Therefore, the Commission should withhold eminent domain authority at this time with respect to parcels that ATXI identifies as A_ILRP_PZ_151-2, A_ILRP_PZ_151-3, A_ILRP_PZ_153-1, A_ILRP_PZ_156, and A_ILRP_PZ_157. The Commission could re-affirm that ATXI is to construct its transmission line along Hwy 51 rather than angling across agricultural land, using a route such as the one shown on Attachment C to Staff 1.0. Alternatively, and Staff believes preferably, the Commission could examine and approve a route that passes through or around the Assumption pinch-point in a separate proceeding, in response to a petition from ATXI to modify the existing Commission-approved route. ATXI has previously filed such petitions in Docket Nos. 15-0269 (for MCCD parcel) and 15-0278 (to bypass a Very High Frequency Omni-Directional Radio Range Tactical Air Navigation Aid (“VORTAC”) antenna), so clearly ATXI should be aware that the Commission may also require it to take this course of action with respect to the Assumption pinch-point. The record in this proceeding simply does not include any detailed examination of alternatives to the Commission-approved route, including ATXI’s proposal.²

If the Commission disagrees with Staff’s legal interpretation of the approved route described above, and grants ATXI eminent domain authority even for the parcels not located along and adjacent to Hwy 51, then to avoid potential complications and delays during the appellate condemnation hearings, Staff suggests that the Commission’s order

² For example, it has not been established in this proceeding whether the street lights at issue in the Assumption pinch-point could be economically relocated.

explicitly find that ATXI's planned deviation from Hwy 51 remains within the meaning of "along Hwy 51" as that term was used in the Docket 12-0598 order. (Staff Ex. 1.0, 20-21.)

III. Statutory Authority and Standard Of Review

Section 8-509 of the Act provides in relevant part as follows:

When necessary for the construction of any alterations, additions, extensions or improvements ordered or authorized under Section 8-406.1, 8-503, or 12-218 of this Act, any public utility may enter upon, take or damage private property in the manner provided for by the law of eminent domain. If a public utility seeks relief under this Section in the same proceeding in which it seeks a certificate of public convenience and necessity under Section 8-406.1 of this Act, the Commission shall enter its order under this Section either as part of the Section 8-406.1 order or at the same time it enters the Section 8-406.1 order. If a public utility seeks relief under this Section after the Commission enters its order in the Section 8-406.1 proceeding, the Commission shall issue its order under this Section within 45 days after the utility files its petition under this Section.

220 ILCS 5/8-509.

The Commission has found that a request under Section 8-509 is not a mere formality; rather, a showing must also be made that the utility made a reasonable attempt to acquire the property before it will be allowed to exercise eminent domain authority in circuit court. As the Commission noted in its Order in Illinois Power Company d/b/a AmerenIP and Ameren Illinois Transmission Company, Petition for a Certificate of Public Convenience and Necessity, pursuant to the similar Section 8-406 of the Illinois Public Utilities Act, to construct, operate and maintain new 138,000 volt electric lines in LaSalle County, Illinois, Docket No. 06-0706 (March 11, 2009) ("Illinois Power Order"):

[G]ranting relief under Sections 8-406 and 8-503 does not render a later request under Section 8-509 a mere formality. While it is true that authority under Section 8-503 is specifically required before eminent domain authority can be granted under Section 8-509, a showing must also be

made that the utility made a reasonable attempt to acquire the property before it will be allowed to exercise eminent domain authority in circuit court. The Commission is not prepared to say that even after a utility makes a reasonable attempt to acquire the property that it would automatically receive eminent domain authority under Section 8-509. Nor will the Commission assume that a circuit court would permit the exercise of eminent domain by a utility that has received authority under Section 8-509 from the Commission.

Illinois Power Order at 88-89 (emphasis added).

In other words, in the Commission's view, receipt of authority under Sections 8-406 (and by extension Section 8-406.1) and 8-503 is a necessary, but not a sufficient, condition for an award of eminent domain authority under Section 8-509. A utility must also demonstrate that it has negotiated in good faith with landowners and has nonetheless failed to obtain all of the necessary parcels. Id. The Commission has reiterated its determination that utilities should negotiate prior to receiving eminent domain authority in several subsequent proceedings. See, e.g., Illinois Power Company d/b/a AmerenIP and Ameren Illinois Transmission Company: Petition for an Order pursuant to Section 8-509 of the Public Utilities Act Approving Petitioners' use of Eminent Domain Power, Final Order ICC Docket No. 10-0173, 14 (November 23, 2010); Central Illinois Public Service Company d/b/a AmerenCIPS: Petition for a Certificate of Public Convenience and Necessity, pursuant to Section 8-406 of the Illinois Public Utilities Act, to construct, operate and maintain new 138,000 volt electric lines in Madison County, Illinois, Final Order ICC Docket No. 07-0532, 13-14 (May 6, 2009). In keeping with prior Commission Orders, ATXI should be required to demonstrate it has negotiated in good faith with adjacent landowners before eminent domain under Section 8-509 is granted in any future proceedings.

In its Final Order in Docket No. 13-0456, the Commission provided guidance for evaluating whether a company has made a reasonable effort to negotiate for the easements it needs to construct an authorized transmission line. Ameren Illinois Company, d/b/a Ameren Illinois, Final Order ICC Docket No. 13-0456, 3 (September 10, 2013) (“AIC Order”). Specifically, the Commission stated that prior to the Commission authorizing a utility to request eminent domain authority in circuit court under Section 8-509, the utility must show that it made a reasonable attempt to acquire the property at issue through negotiation. (Id., citing March 11, 2009 Order in Docket No. 06-0706 at 88.) In that case, the Commission evaluated whether AIC made a reasonable effort to negotiate for the easements it needed to construct the authorized transmission line. In making its determination, the Commission relied upon five factors: (1) the number and extent of contacts with the landowners, (2) whether the utility has explained its offer of compensation, (3) whether the offers of compensation are comparable to offers made to similarly situated landowners, (4) whether the utility has made an effort to address landowner concerns, and (5) whether further negotiations will likely prove fruitful. (AIC Order, 4.)

A. Contact with Landowners

ATXI representatives or representatives of ATXI’s contract land agent, Contract Land Staff, have contacted each landowner at least twenty times. (ATXI Ex. 1.0, 7.) ATXI includes a summary of its contacts with each of the landowners of the properties. ATXI Ex. 2.3. In addition, ATXI submitted confidential workpapers for each Unsigned Property that include the date and time of each successful and unsuccessful attempt to contact the landowners or their representative. (Staff Ex. 1.0, 7-8.)

B. Explanation of Compensation Offer

ATXI's property evaluations and financial offers to landowners are based upon a third-party independent appraiser's determination of the market value of each property. (Staff Ex. 1.0, 8.) It appears from the evidence that ATXI's initial offers are approximately 90% of the fee value of property subject to the easement, and include diminution of value for the remaining property due to the presence of the easement, as well as payment for crop damage resulting from the transmission line installation, if applicable. ICC Staff Ex. 1.0, 8. When disagreements regarding ATXI's valuation occur, ATXI invites landowners to present their own appraisal for ATXI to consider during negotiations. ATXI 1.0, 13. ATXI used a standard calculation worksheet to explain its offers to each of the affected landowners so that offers it made to similarly situated landowners would be comparable. (ATXI Ex. 1.0, 8; ATXI Ex. 1.2.)

C. Reasonableness of Compensation Offers

Staff witness Greg Rockrohr, an electrical engineer, offers no opinion regarding the adequacy of ATXI's monetary offers. (Staff Ex. 1.0, 8-9.)

D. Responsiveness to Landowner Concerns

ATXI has demonstrated that it has made reasonable efforts to obtain the property rights it seeks through use of logically and consistently-derived initial compensation offers followed by discussions and negotiations with individual landowners. Staff Ex. 1.0, 8-9.

There are properties included within ATXI's request where ATXI inability to acquire a voluntary easement may be due to reasons other than the amount of compensation offered. With regard to the properties with ATXI Identifiers A_ILRP_QM_AD_111, A_ILRP_QM_AD_112, and A_ILRP_QM_AD_255, ATXI indicates the owners would not

discuss ATXI's request at all as they do not want the transmission line on their property. With regard to the property with ATXI identifier A_ILRP_PZ_CH_112, the owner requested a pole relocation that ATXI was unable to grant. Staff Ex. 1.0, 10. Despite the fact that ATXI could not honor every landowner request, Staff believes ATXI has had valid reasons to deny the landowner requests it did not honor. (Staff Ex. 1.0, 10.)

E. Usefulness of Further Negotiations

Staff does not take a position on the usefulness of further negotiations.

IV. Conclusion

For the reasons set forth above, Staff respectfully requests that the Commission's Final Order in the instant proceeding reflect Staff's recommendations consistent with this Initial Brief.

Respectfully submitted,

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